

TRANSMITTAL SLIP		DATE
TO: <i>ICS Registry</i>		
ROOM NO.	BUILDING	
REMARKS:		
FROM:		
ROOM NO.	BUILDING	EXTENSION

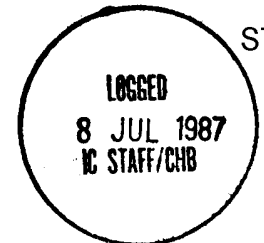
DCI/ICS-87-0826  
14 April 1987

*QNT 19-SK*

MEMORANDUM FOR: Director, Intelligence Community Staff

FROM:   
Director, CCISCMS/ICS

SUBJECT: Legislative Program



1. This memorandum recommends that you discuss with the ADCI a new problem with a legislative item contained in the President's "Report to the Congress on the Nation's Counterintelligence and Security Countermeasures Plans, Programs, and Capabilities" and encourage him to sign the attached letter to OMB and to solicit the National Security Advisor's intervention with OMB, both with the purpose of persuading OMB to move the legislation to the Congress. These proposed actions were briefly discussed with the ADCI on 9 April 1987.

2. Page 39 of the President's report specifically promises legislation that would exempt security determinations from administrative and judicial review. In pertinent part, the text states:

"I urge legislation that takes determinations concerning access to classified information out of the courts and out of quasi-judicial administrative fora (for example, Merit System Protection Board).

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3. This legislation, together with the related proposal on page 38 that would protect the security investigator and adjudicator from tort in the denial of clearances and accesses, is essential for strengthening of government-wide personnel security. Both items were fully supported in the SIG-I and subordinate body deliberations that led to the President's report.

4. Inertia or unstated agendas seem to have caused the legislation to have dropped out of sight in OMB. The staff-level OMB excuse for the inaction is that the Department of Justice has not supported the proposed legislation. OGC is working to see that support from Justice is provided. However, OMB staff levels, per OCA, state that the legislation is now dead. OGC has indicated that a revival is possible if sufficient pressure is applied to OMB; it has, therefore, drafted the attached letter per my request.

DCI/ICS-87-0826  
14 April 1987

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FROM:   
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SUBJECT: Legislative Program



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5. Mr. Carlucci's intervention with OMB would also appear beneficial; thus, the recommendation that he be asked to act.

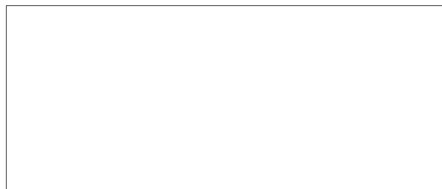
6. You may also wish to consider who within DoD should be asked to intervene. Because DoD has by far the largest number of security clearance holders, with most of them subject to Merit System Protection Board review, it clearly has the greatest need for the legislation.

7. We could suggest to the SSCI staffers that a letter be sent to the President, noting that he has promised to submit this proposed legislation and asking for an arrival date. I will not make such a suggestion unless so directed. I cannot promise that someone else will not do it. Please recall that [redacted] deputy throughout the period of the preparation of both the Stilwell Commission report and the President's report (Britt Snider) is now Minority Counsel for the SSCI.

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Attachment:  
a/s



SUBJECT: Legislative Program

D/CCISCMS/ICS

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Distribution of DCI/ICS-87-0826 (w/att as stated):

- 0 - Addee
- 1 - OCA
- 1 - LL/ICS
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- 1 - D/CCISCMS chrono

The Deputy Director of Central Intelligence

Washington, D.C. 20505

The Honorable James C. Miller, III  
Director, Office of Management and Budget  
Washington, D. C. 20503

Dear Dr. Miller:

I am writing to you because I have been informed that the Office of Management and Budget does not intend to include in the Intelligence Authorization Bill for FY 1988 a proposed amendment to the National Security Act of 1947 exempting government security clearance and access determinations from administrative and judicial review. I strongly believe that this proposed amendment must be included in the Authorization Bill.

As you know, in his recent "Report to the Congress on the Nation's Counterintelligence and Security Countermeasures Plans, Programs, and Capabilities," the President proposed legislation that would clarify, and thus enhance, the security authorities of executive branch agencies. In particular, the President called for legislation that would clearly establish that executive branch determinations concerning access to classified information cannot be second-guessed by courts and quasi-judicial administrative fora, like the Merit Systems Protection Board.

The authority of the executive branch agencies to make security clearance and access determinations is derived from the President's constitutional authority with respect to foreign affairs and national defense matters. This authority is entirely discretionary and was never meant to be subject to administrative or judicial review. In light of the foregoing and in order to carry out the President's program, the proposed amendment was placed in the Authorization Bill.

Since the President has endorsed this proposal, the Department of Justice has not objected to it, and the security benefits of it would be salutary, I believe it is imperative that the proposal be included in the Authorization Bill. If there remains any question about including this proposal in the Authorization Bill, I would like to discuss this matter with you further at your convenience.

Sincerely,

Robert M. Gates  
Acting Director

cc: Assistant to the President for  
National Security Affairs